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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,681	10/28/2003	Brian Peter Belliveau	202ES057A	3932
37535	7590	12/21/2005	EXAMINER	
NOVEON IP HOLDINGS CORP. 9911 BRECKSVILLE ROAD CLEVELAND, OH 44141-3247			TRAN, THAO T	
			ART UNIT	PAPER NUMBER
			1711	
DATE MAILED: 12/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,681

Applicant(s)

BELLIVEAU ET AL.

Examiner

Thao T. Tran

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6-22, 24, 25 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) 27-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is in response to the Amendments filed on 11/30/2005.
2. Claims 1-3, 6-22, 24-25, and 27-36 are currently pending in this application. Claim 6 has been canceled. Claim 1 has been amended.
3. Claims 27-36 have been withdrawn as directed to a non-elected invention as indicated in the Office action of 10/19/2004.
4. In view of the prior Office action of 5/31/2005, the objection of claim 15 has been withdrawn due to the Amendment made thereto.
5. In view of the prior Office action of 5/31/2005, the rejection of claims 1-3, 6-22, 24-26 as being unpatentable over Johansen et al. (US Pat. 4,303,457) in view of Wu (US Pat. 6,392,002), has been withdrawn due to the Amendments made thereto.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 6-22, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaillancourt (US Pat. 4,798,597) alone or in view of Kitou et al. (US Pat. 5,993,436).

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Vaillancourt discloses a medical tube, comprising an outer layer and an inner layer (see abstract; col. 2, ln. 1-8). The outer layer is made of polyether polyurethane resin, having a Shore hardness of 60A-80A. The inner layer is made of a polyurethane resin containing glycol chains, having a Shore hardness of 50A (see col. 2, ln. 23-30, 39-56).

Vaillancourt differs from the presently claimed invention in that the reference does not teach one of the layers to have a Shore hardness of about 95A to about 85D.

However, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, that the degree of hardness of a layer would have been determined by adjusting parameters, such as thickness of the layer, in order to obtain the properties desired.

Kitou discloses a catheter tubing, comprising a polycarbonate (or polycaprolactone) polyurethane having a Shore hardness of 60D or higher to improve kinking resistance (see abstract; Examples).

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have employed the polyurethane, as taught by Kitou, in the layers of Vaillancourt, for the purpose of having a medical tube with enhanced kinking resistance as well as being stiff for ease of insertion, which becomes pliable after intubation.

With respect to the medical tube having a second hard layer, although the Vaillancourt combination is silent with respect to additional hard layers, it would have been obvious to one of ordinary skill in the art that duplication of a layer would not have significant patentable weight, since multiplicity would have enhanced the desired capacity and properties.

Response to Arguments

8. Applicant's arguments with respect to the rejection of the claims as being unpatentable over Johansen et al. (US Pat. 4,303,457) in view of Wu (US Pat. 6,392,002), have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thao T. Tran whose telephone number is 571-272-1080. The examiner can normally be reached on Monday-Friday, from 9:00 a.m. - 5:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tt
December 16, 2005



**THAOT. TRAN
PATENT EXAMINER**